

The Snake River Basin Adjudication

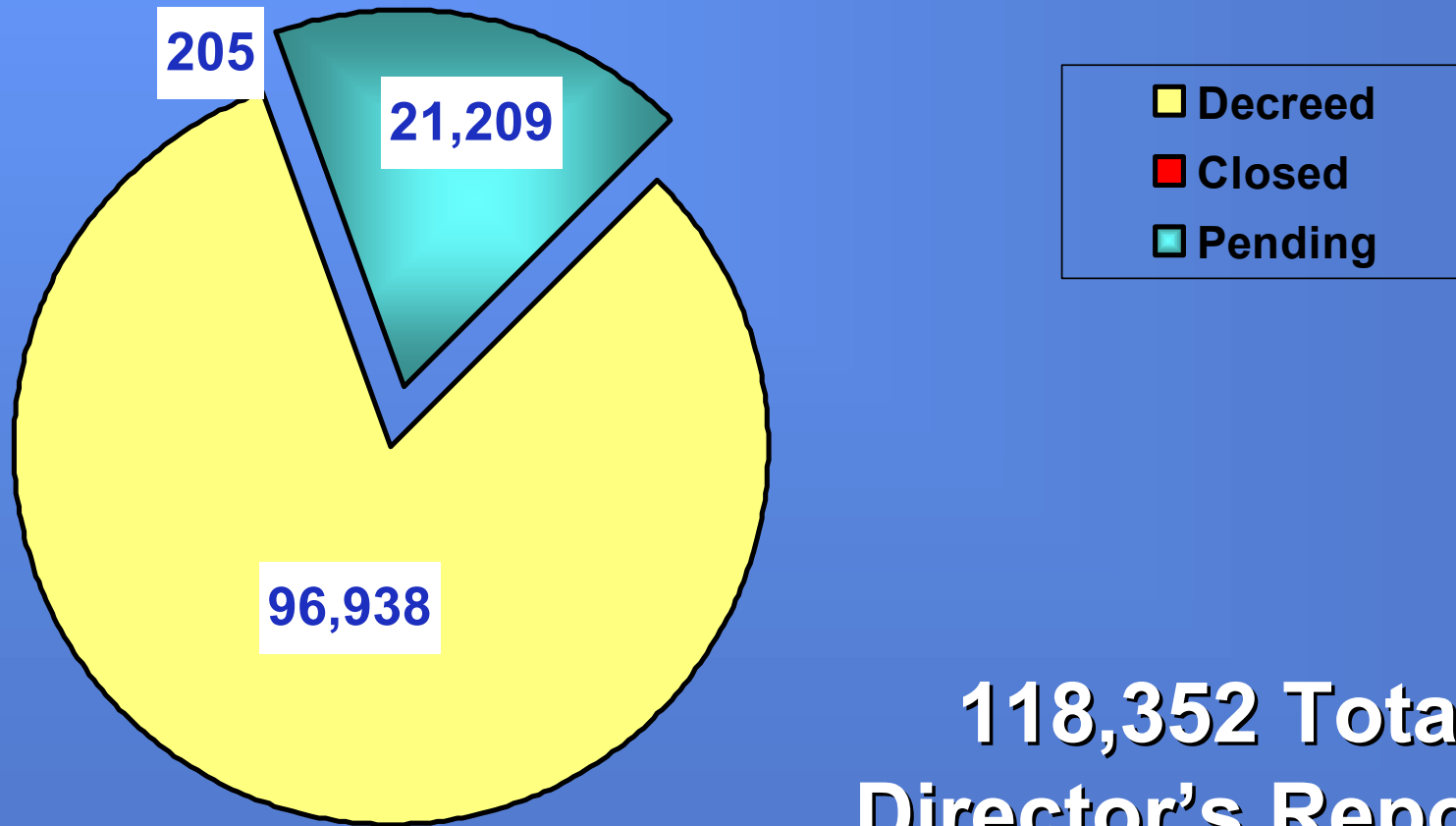


- **Reporting of State Based Claims**
- **State Based Issues**
- **Federal Reserve Issues**

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SRBA Summary

as of September 11, 2002



**118,352 Total
Director's Reports**

SRBA Investigative Districts for Director's Irrigation and Water Rights

Legend:

- Initial (Pink)
- Completed (Green)
- In Progress (Yellow)
- Groundwater (Dark Green)
- Baseline (White)

Map Labels:

- Boise
- Idaho Falls
- Pocatello
- Twin Falls

District Numbers:

- 21, 22, 23, 24, 25, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 45, 47, 51, 55, 57, 61, 63 Part I, 63 Part II, 63 Part III, 65 Part I, 65 Part II, 65 Part III, 67, 69, 71, 72, 73, 74, 75, 77, 78, 79, 81, 82, 83, 84, 85, 86



State Based Issues

- *North Snake Ground Water Dist. v. Gisler*, 136 Idaho 747, 40 P.2d 105 (2002)
- Recovered Water Settlement Basin 35
- *In re SRBA Wood v. Troutt*, Memorandum Decision and Order on Challenge and Order of Partial Decree, Subcase No. 65-5663B (May, 2002)
- *U.S. v. State*, ____ Idaho ____, 51 P.3d 1110 (2002) Disqualification of Judge Wood denied
- Conjunctive Management General Provision Decreed
- Separate Streams Settlement with BOR

- ***North Snake Ground Water Dist. v. Gisler*, 136 Idaho 747, 40 P.2d 105 (2002)**
 - The Water District tried to enter the subcase for the first time by filing a Motion to Alter or Amend the Special Master's Recommendation
 - The Motion was denied. The Supreme Court held that the Water District's Motion was untimely and that it had a duty to enter the subcase earlier if it wanted to participate in the subcase
- **Recovered Water Settlement, Basin 35**
 - Claims allegedly based on Idaho Code Sec. 42-228
 - Settlement recognizes that part of the diversion from the Snake River goes to recharge for irrigation purposes.
- ***In re SRBA, Memorandum Decision and Order on Challenge and Order of Partial Decree (Wood v. Troutt)*, Subcase 65-5663B (May, 2002)**
 - Filing of a claim in the SRBA tolls the finding of forfeiture under Idaho Code Sec. 42-222 for that water right
 - "Once the partial decree is entered the statutory period for non-use begins to run anew." *Id.* at 14.

- ***U.S. v. State*, ___ Idaho ___, 51 P.3d 1110 (2002)**

- Nez Perce Tribe filed motion to disqualify Judge Wood due to conflict of interest
- Supreme Court denied motion and determined issue was moot

- **“Connected Sources” (Conjunctive Management) General Provision Partially Decreed**

1. The following water rights from the following sources of water in Basin ____ shall be administered separately from all other water rights in Basin ____ in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
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2. The following water rights from the following sources of water in Basin ____ shall be administered separately from all other water rights in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
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3. Except as otherwise specified above, all other water rights within Basin ____ will be administered as connected sources of water in the Snake River basin in accordance with the prior appropriation doctrine as established by Idaho law.

- **Separate Streams Settlement with BOR in Basin 65**

- Clarifies the “Connected Sources” General Provision as follows:
 - Basin 65 General Provisions No. 3, the Separate Streams General Provision does not apply to appropriations of water after October 18, 1977.
 - This water right shall be administered as being from a separate sources pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Sec. 42-222 or successor statutes, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the even of injury.



Federal Reserve Issues

- PWR 107
- Filing Fees
- Quantification for Wild and Scenic Rivers and Hells Canyon Recreation Area
- Nez Perce Tribe, Springs and Fountains

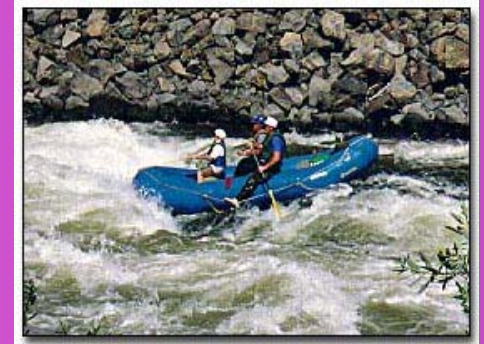
- ***In Re SRBA, Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights), Consolidated Subcase 23-10872 et al. (December 28, 2001)***
 - PWR 107 withdrew lands surrounding springs or water holes providing water sufficient for more than just a single-family home.
 - PWR created an implied federal reserve water right in the spring or water hole whether or not the water flowing from the spring or water hole is tributary to a perennial running stream.
 - The place of use for the water right is within the boundaries of the 40-acre section withdrawn (or land within one quarter mile of land was unsurveyed as of April 17, 1926).
 - Water flowing from the spring or water hole and leaving the boundaries of the withdrawn land does not create another withdrawal of contiguous land or an accompanying reserved water right.
 - Stream segments and other bodies of water that do not fit within the definition of a “spring” or “water hole” are outside the scope of PWR 107.

- ***In Re SRBA, Order Denying Motion to Dismiss for Failure to Pay Filing Fees, Consolidated Subcase 03-10080 (Dist. Ct. Nov. 1, 2001)***
 - Shoshone Bannock Tribe filed on its own behalf 1,083 off-reservation in-stream flow claims
 - 127 Objectors filed motion to dismiss the claims because the Tribe failed to pay filing fees as required by Idaho Code Sec. 42-1414 and thus, the SRBA District Court lacked subject matter jurisdiction over the claims.
 - Court held that it has subject matter jurisdiction over the claims even though the filing fees were not submitted because the commencement of the SRB defined the Court's subject matter jurisdiction, not the actual filing of the individual claims within the SRBA.

Negotiations on Quantification

Wild and Scenic Rivers

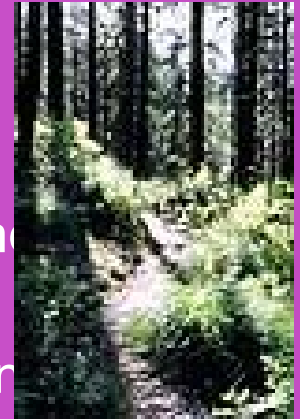
Hells Canyon National Recreation Area



- *Potlatch v. U.S.*, 134 Idaho 912, 12 P.3d 1256 (2000) (Wild and Scenic)
- *Potlatch v. U.S.*, 134 Idaho 916, 12 P.3d 1260 (2000) (Hells Canyon)
- **Additional Parties Allowed to Participate**
 - *In Re SRBA, Order on Motion to Participate/Intervene, AO1 10k, I.R.C.P. 24(a) & (b); Order on Motion to Dismiss Objections to Amended Claims, I.R.C.P. 12(b)(6), Consolidated Subcase 75-13316 (July 29, 2002)*
 - Idaho Rivers United, The Wilderness Society along with 5 individual claimants filed timely objections after the U.S. amended its claims. Objections stated that the amount claimed by the U.S. was not sufficient
 - The two environmental groups seek to participate on behalf of the individual claimants
 - Court held that the individuals have standing to assert their objections because they are all 5 claimants to the SRBA.
 - Idaho Rivers United and the Wilderness Society are not claimants in the adjudication and therefore do not have standing to assert objections.
- Status/Scheduling Conference set for October 15, 2002

• Nez Perce Tribe, Springs and Fountains

- Originally claimed 4,360 springs and fountains
 - All the flow
 - Throughout the reservation and relinquished lands
- Currently have 1,888
 - Reduced to $\frac{1}{2}$ the flow of each spring or fountain
 - Only on lands relinquished in the 1863 Treaty
 - Within $\frac{1}{4}$ mile from perennial streams or rivers
- Land ownership of the 1,888 claims



<i>Land Ownership</i>	<i>Number of Claims</i>
Private	1,263
Public	587
Unknown	35
Nez Perce Tribe	3



Procedural Posture of Springs and Fountains Claims

- October, 2001 Parties designated 20 “test cases”
 - 10 on public land
 - 10 on private land
- 13 “test cases” Remain
- Summary Judgment Hearing was held 9/24, 2002
- Trial on “test cases” set for October 16, 2002



IDWR to File All
Director's Reports by 2005